with a request that it be corrected and returned to them on their account. The abstracter undertook to correct the abstract and returned it as correct to the firm which sent it. The abstracter neglected to note one lien upon the land, thereby causing loss to the plaintiff, for which he brings action. *Held*, that he may recover. *Young* v. *Lohr* (1902),—Iowa—, 92 N. W. Rep. 684.

Conceding it to be the general rule that the liability of the abstracter is based upon contract (*Russell* v. *Abstract Co.*, 87 Iowa 233, 54 N. W. 212, 43 Am. St. Rep. 381), it was contended that there was no privity of contract between the plaintiff and the defendant which would justify recovery; and the case of *Bank* v. *Ward*, 100 U. S. 195, 25 L. ed. 621, was relied upon. The court, however, declared that case to be distinguishable and held that the case at bar fell within the familiar rules permitting an undisclosed principal to enforce contracts made on his account by his agent, citing MECHEM AGENCY § 769; 1 AM. AND ENG. ENC. LAW (2d ed.) 1168.

AGENCY—LIABILITY FOR ACTING WITHOUT AUTHORITY.—Edgar Oliver and Frederick William Oliver held as trustees certain consols and Bank of England stock, transferable only on the books of the bank. By the second Oliver, a firm of stock brokers were given a power of attorney to sell and transfer the property, said power being signed by him and the signature of the other trustee being forged. The brokers had no knowledge of the forgery and were innocent of any fraud. In accordance with the statute the bank upon demand by the brokers, transferred the stock upon its books, relying upon the power. In a suit to compel the bank to replace the property brought by Edgar Oliver, the surviving trustee, in which the stock-brokers had been joined by proper notice, *Held*, that the brokers were liable to the bank in all damages which the corporation might suffer. *Oliver* v. *Governor & Co. of the Bank of England* [1902], 1 Ch. 610, 86 Law Times Rep. 248.

The liability of the agent was based upon the implied warranty of authority which the court of appeals concluded was raised by implication of the law, when the agent demanded under the statute that the transfer be made upon the books of the bank. In an extended criticism in the *Law Quarterly Review*, Oct., 1902, p. 364, the decision is characterized as an unwarranted extension of the rule which applies in the case of contracts induced by innocent misrepresentations. The decision seems to be sustained, however, by the cases of *Collen* v. *Wright*, 8 El. & Bl. 647, 27 L. J. Q. B. 275, and *Firbanks Ex'rs* v. *Humphreys*, 18 Q. B. D. 54, 56 L. J. Q. B. 57, cited by the court. In *Collen* v. *Wright* (*supra*), it was held that a warranty of authority would be implied where the representations led to a contract. The case of *Firbanks Ex'rs* v. *Humphreys* (*supra*), extends the rule to other transactions than contracts, which were induced by the misrepresentations. In the United States it has long been recognized that an agent who falsely, though innocently, represents himself as clothed with authority and thereby induces a third person to enter into a contract with his alleged principal, is liable to the injured party upon his express or implied warranty of authority. *White* v. *Madison*, 26 N. Y. 117; MECHEM ON AGENCY, Sec. 549, p. 384 (see also cases cited in notes). There is a division of the authorities on the question whether the agent should be held liable on the contract itself as principal, *Solomon* v. *Penoyar*, 89 Mich. 11; *Terwilliger* v. *Murphy*, 104 Ind. 32; although the weight of authority is against direct liability. *Johnson* v. *Welch*, 42 W. Va. 18, 24 S. E. 585; 1 AM. AND ENG. ENCYL. OF LAW, p. 401.

AGENCY—DUTY TO EXERCISE GOOD FAITH—COMMISSIONS.—An agent agreed to sell lands and receive as commissions all that he might obtain over

$1,050. After finding that he could sell for more, he induced the complainant to agree that he should have all he could get over $1,000, representing that the property could not be sold for $1,050. The principal brought suit in equity, to recover the whole price from the agent. *Held*, that the complainant can recover the $50 lost by changing the original contract, but that the agent is entitled to his commissions under that agreement. *Ballinger* v. *Wilson* (1902), — N. J. Eq. —, 53 Atl. Rep. 488.

The court decided for the complainant on the ground that any contract concerning the subject-matter, made with the principal after the agency is created, must be made in good faith on the part of the agent, and with knowledge on the part of the principal of all material facts known to the agent. The rule applied is, in substance, that the agent must be loyal to his trust, a principle universally recognized as fixed in the policy of the law. *People* v. *Township Board*, 11 Mich. 222; *Davis* v. *Hamlin*, 108 Ill. 39, 48 Am. Rep. 541. Where, however, the facts are fully disclosed to the principal, the agent may, in good faith, deal with him, although the transaction will be subjected to the closest scrutiny of the court. *Rochester* v. *Levering*, 104 Ind. 562; 23 Cent. Law Jour. 130. Contrary to the ruling in the principal case, that the complainant should not recover the full price received it has been held, that by fraud or wrong-doing, the agent forfeits all right to compensation. *McKinley* v. *Williams*, 74 Fed. Rep. 94; *Humphrey* v. *Eddy Transportation Co.*, 107 Mich. 163, 65 N. W. 13.

BANKRUPTCY—PREFERENCES.—A preferential payment was made by a debtor to one of his creditors within four months prior to former's bankruptcy. *Held*, not void under sec. 60b and sec. 67e of the act of 1898, though made with fraudulent intent on debtor's part, if it be accepted by the creditor without knowledge that a preference was intended. *Sherman* v. *Luckhardt* (1902), — Kan. —, 70 Pac. Rep. 702.

Section 60b in effect provides that, regardless of the intent of the debtor, the transfer is valid if the creditor had no reasonable cause to believe that a preference was intended; while section 67e provides that regardless of the knowledge of the transferee, the transfer shall be void if the debtor intended to hinder, delay or defraud his creditors. By these sections two tests, each diametrically opposed to the other, are provided to determine the validity of transfers made by an insolvent. In the principal case the question arises: which test shall be applied when there is an intention on the part of the debtor to hinder, delay or defraud the creditors and at the same time an absence of reasonable cause to induce the belief in the creditor that a preference was intended? The judges were divided on this question, four constituting the majority and three the minority. The majority opinion applies sec. 60b, making the knowledge of the creditor the test, and disregards sec. 67e because, as they hold, it does not apply to the case of transfers made to creditors. The dissenting opinion applies the other provision, making the intent of the debtor the test of validity, but the opinion makes no attempt to explain away the other provision and in fact makes no reference to it. The question is one of real difficulty and one upon which there is very little authority. In *Pirie* v. *Trust Co.*, 182 U. S. 438, 21 Sup. Ct. 906, the court, in argument, says that the "purpose of sec. 67e is to prohibit the disposition of property by the debtor other than to creditors in fraud of the act." This supports the prevailing opinion in the principal case. On the other hand, in a note to *In re McLam* 3 A. B. R. 245, (S. C. 97 Fed. Rep. 922) the editor says, "to invalidate a transfer, the transferee must either have had at the time, reasonable cause to believe that the transferrer intended to give a preference or there must have been an intent, on the part of the transferrer, to